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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2014-0708; Amendment No. 91-334A]

RIN 2120-AK93

Extension of the Prohibition Against Certain Flights Within the Damascus (OSTT) Flight Information Region (FIR)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action extends the prohibition of certain flight operations in the Damascus (OSTT) Flight Information Region (FIR) by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds that this action continues to be necessary to address a potential hazard to persons and aircraft engaged in such flight operations.

DATES: This final rule is effective on December 30, 2016.

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action continues the prohibition against certain flight operations in the Damascus (OSTT) Flight Information Region (FIR) by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds this action necessary to address a continuing hazard to persons and aircraft engaged in such flight operations. This rule extends SFAR No. 114, § 91.1609, (SFAR 114) from December 30, 2016, to December 30, 2018.

II. Authority and Good Cause

A. Legal Authority

The FAA is responsible for the safety of flight in the United States and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA's authority to issue rules on aviation safety is found in title 49 of the U.S. Code. Subtitle I, section 106(f), describes the authority of the FAA Administrator. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This SFAR is promulgated under the authority described in Title 49, Subtitle VII, Part A, Subpart III, section 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of that authority because it continues the prohibition against certain flight operations in the OSTT FIR due to the hazard to persons and aircraft engaged in such flight operations that is described in the Background section of this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” In this instance, the FAA finds that notice and public comment to this final rule, as well as any delay in the effective date of this rule, are contrary to the public interest due to the immediate need to address the continuing hazard to civil aviation that exists in the Damascus (OSTT) FIR, as described in the Background section of this final rule.

III. Background

The significant threat identified when the FAA first published SFAR 114 to civil aviation operating in the Damascus (OSTT) FIR continues due to the presence of anti-aircraft weapons controlled by non-state actors, threats made by the extremist groups, de-confliction concerns, and ongoing military fighting. Flight safety risks associated with a lack of de-

confliction between various military forces conducting operations in Syria and civil aviation, as identified in the original prohibition, also continue unabated.

Due to the presence of foreign national military forces and non-state actors operating in Syria, the FAA has determined that safety of flight continues to be a serious safety concern for U.S. civil aviation flight operations in the Damascus (OSTT) FIR. There are multiple extremist groups, known to be equipped with a variety of anti-aircraft weapons including radar-guided surface-to-air missiles (SAMs) and man-portable air defense systems (MANPADs), which have the capability to threaten civil aircraft. Syrian and Russian military aircraft have been shot down during the course of the current conflict and these groups have previously warned civilian air carriers against operating within (or providing service to) Syria.

In 2015 and in support of the Asad regime, Russia began conducting military operations using fighter and bomber aircraft and employed advanced cruise missiles. These operations further increase the risk to civilian flight operations within the Damascus (OSTT) FIR.

The FAA continues to assess the situation in the Damascus (OSTT) FIR and believes there is a significant threat to civil aviation operating in the Damascus (OSTT) FIR at all altitudes due to the presence of anti-aircraft weapons controlled by non-state actors, threats made by the extremist groups, de-confliction concerns, and ongoing military fighting.

Due to the continuation of the previously described hazards to U.S. civil aviation operations, the FAA is extending the expiration date of SFAR No. 114, § 91.1609, from December 30, 2016 to December 30, 2018, to maintain the prohibition on flight operations in the Damascus (OSTT) FIR by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-

registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers.

The FAA will continue to actively monitor the situation and, based on evaluations, determine the extent U.S. civil operators may be able to safely operate in the Damascus (OSTT) FIR in the future. Amendments to this SFAR No. 114, § 91.1609, may be appropriate if the risk to aviation safety and security changes. Thus, the FAA may amend or rescind this SFAR No. 114, § 91.1609, as necessary prior to its expiration date.

Because the circumstances described herein warrant a continuation of the flight restrictions imposed by SFAR 114, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. I also find that this action is fully consistent with the obligations under 49 U.S.C. 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

IV. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified in 5 U.S.C. 603 et seq., requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39), as amended, 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards.

Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive Order; further, this rule is "significant" as defined in DOT's Regulatory Policies and Procedures. This rule will not have a significant economic impact on a substantial number of small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

A. Regulatory Evaluation

Department of Transportation (DOT) Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

For SFAR No. 114, § 91.1609, the FAA determined that incremental costs were minimal for U.S. operators of large transport category airplanes (four part 121 operators and two part 125M operators) because they had voluntarily ended their overflights in March, 2011, before the FAA's August 18, 2014 issuance of FDC NOTAM 4/4936. The FAA also determined that the incremental costs of SFAR No. 114 were minimal for about 15 "on-demand" large carriers (part 121 and part 121/135) and about 75 small "on-demand" operators (parts 135, 125, 125M, and 91K). These operators had previously flown into and out of Syria or conducted overflights in the OSTT FIR. But because of sanctions imposed by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the ongoing conflict, the FAA believed that few, if any, of these "on-demand" operators were still operating in the OSTT FIR immediately before the FAA issued FDC NOTAM 4/4936.

Due to significant and increased hostilities, and because the OFAC sanctions remain in place, the reasons for the FAA's previous finding of minimal cost for SFAR No. 114 remain unchanged. Therefore, the FAA finds that the incremental cost of the SFAR No. 114 extension will be minimal.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Public Law 96-354, "RFA"), 5 U.S.C. 601 *et seq.*, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals

are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, 5 U.S.C. 605(b) provides that the head of the agency may so certify and a regulatory flexibility analysis will not be required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Prior to the hostilities leading to the earlier published SFAR No. 114, § 91.1609, there were many small entities conducting operations through the now restricted airspace. After the FAA published SFAR No. 114, § 91.1609, the FAA received no request to use this airspace. Given no requests have occurred, the FAA believes the earlier determination of minimal cost is accurate. Thus, extending the airspace restriction will not impose a significant economic impact. Therefore, as provided in § 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended, prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of

safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from a hazard outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this regulation.

While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition. Further, following the downing of Malaysian Airlines Flight 17, there is increased attention in the international community and ICAO to conflict-related threats to civil aircraft. Foreign air carriers and other foreign operators may choose to avoid, or be advised/directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6f of this order and involves no extraordinary circumstances.

The FAA has reviewed the implementation of this SFAR and determined it is categorically excluded from further environmental review according to FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5-6.6f. The FAA has examined possible extraordinary circumstances and determined that no such circumstances exist. After

careful and thorough consideration of the action, the FAA finds that this Federal action does not require preparation of an Environmental Assessment or Environmental Impact Statement in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1F.

V. Executive Order Determinations

A. Executive Order 13132, “Federalism”

The FAA has analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132, “Federalism.” The agency has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or

prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. Additional Information

A. Availability of Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

- Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- Visiting the FAA’s Regulations and Policies web page at http://www.faa.gov/regulations_policies or
- Accessing the Government Publishing Office’s web page at <http://www.fdsys.gov>

Copies may also be obtained by sending a request (identified by docket or amendment number of the rule) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677.

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this

document may contact its local FAA official, or the person listed under the “For Further Information Contact” section at the beginning of the preamble. You can find out more about SBREFA on the Internet at: http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Syria.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations, as follows:

PART 91-GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

2. Revise § 91.1609, paragraph (e), to read as follows:

**§ 91.1609 Special Federal Aviation Regulation No. 114 —Prohibition Against Certain
Flights in the Damascus (OSTT) Flight Information Region (FIR).**

* * * * *

(e) Expiration. This SFAR will remain in effect until December 30, 2018. The FAA may amend, rescind, or extend this SFAR No. 114, § 91.1609, as necessary.

Issued under authority provided by 49 U.S.C. 106(f), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), in Washington, DC, on December 19, 2016.

Michael P. Huerta
Administrator.

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